HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No.3017 of 2005

Between:

T. Venkata Ramana …Petitioner.

AND

District and Sessions Judge,

Nellore & another. …Respondents.

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:: O R D E R ::

Counsel for the Petitioner : Sri Vedula Venkata Ramana

Counsel for the Respondents : Sri C.V. Nagarjuna Reddy

24th FEBRUARY 2006

Per G.S.Singhvi, C.J.

Till early seventies, the Courts exercised restraint in accepting the plea of the employees to interfere with the discretion exercised by the public employer to impose a particular penalty on the employees found guilty of misconduct. Mid

seventies and next 1½ decade witnessed a change in the approach. The law journals of those years are loaded with judgments which are reflective of a liberal and compassionate approach by the Courts in the matter of interference with the punishment imposed by the employer. This trend encouraged white collared employees to indulge in widespread indiscipline and the country as a whole suffered on that account. As a consequence, the judicial fraternity was compelled to rethink on the issue and the judgments of the latter part of nineties and thereafter are clearly indicative of a comparatively strict approach and restraint while examining the issue of quantum of punishment.

One of the earliest judgments in which the Supreme Court interfered with the punishment imposed on the employee is **Hind Construction and Engineering Co. Limited v. Workmen.** That was a case involving industrial workers. The Supreme Court found that the punishment of dismissal from service imposed by the employer was totally disproportionate to the misconduct found proved and held that the action of the employer amounted to victimisation. The first indication of judicial intervention in the cases of civil servants can be traced in the judgment of the Supreme Court in **Bhagat Ram v. State of Himachal Pradesh**. The doctrine of proportionality was invoked in **Ranjit Thakur v. Union of India** and the order of punishment was quashed with the following observations:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. Ghanayutham**, a two-Judge Bench extensively reviewed foreign judicial precedents on the subject, analysed the doctrine of proportionality and Wednesbury Rules and laid down the following propositions:-

> "(1) To judge the validity of any administrative order or statutory discretion,

normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of “proportionality” and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.”

I n **Om Kumar v. Union of India** the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur Vs. Union of India** (supra), **B.C. Chaturvedi Vs. Union of India** and held:

> "1) In this context, we shall only refer to these cases. In **Ranjit Thakur V. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi Vs. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would nor normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."
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> 2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal** the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

> "The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. <u>It is not only the amount involved by the mental set-up, the type of duty performed and</u>

similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is ours)

In **Director General, RPF v. Ch. Sai Babu** the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

Reference also deserves to be made to the decisions of **State Bank of India v. Samrendra Kishore Endow**; **State of Uttar Pradesh v. Ashok Kumar Singh**; **State of Uttar Pradesh v. Nandkishore Shukla**; **State of Punjab Vs. Baxi Singh**; **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**; **Union of India Vs. J.R. Gheman**; and **Secretary A.P. SWRE I Society Vs. J. Prathap** wherein the Supreme Court disapproved the invoking of the doctrine of proportionality by the High Courts. Therefore, it can now be treated as settled law that in exercise of power under Article 226 of the Constitution of India, High Court will not sit in appeal over the findings recorded by the enquiry officer/ disciplinary authority and will not interfere with the punishment awarded by the employer. In such matters, the power of judicial review deserves to be exercised in exceptional cases and that too when the Court is convinced that the procedure adopted by the employer is grossly violative of the statutory rules or the rules of natural justice resulting in prejudice to the employee or the punishment imposed by the employer is shockingly disproportionate to the misconduct found proved. In abstract, this proposition

appears simple, but its application to the factual matrix of the cases brought before the Court is always difficult and, at times, the Presiding Officer tends to be subjective in determining whether the punishment imposed by the employer is wholly arbitrary or shocks the conscience of the Court.

In order to avoid an apparent and inexplicable divergence of judicial verdicts on the subject, we consider it appropriate to observe that while examining the petitioner's challenge to the quantum of punishment, the Court must take into consideration the total length of service, the nature of the post held by the employee, the duties and degree of responsibility attached to the post, the nature of misconduct found proved and its impact on the service as a whole. Above all, the Court should keep in view the larger public interest and then determine whether there is any justification for interfering with the discretion exercised by the employer in the matter of imposition of penalty. The Court cannot interfere merely because it feels that a lesser penalty could have been imposed or a compassionate approach deserves to be adopted.

We have prefaced the disposal of this writ petition by noticing difference in the approach adopted by the Supreme Court in different years in matters involving challenge to the punishment imposed by the employer on the delinquent employee and some of the recent verdicts because, after perusing the record and hearing Sri Vedula Venkata Ramana and Sri C.V. Nagarjuna Reddy and giving our most anxious consideration to the plea of compassion raised by the learned counsel for the petitioner, we are convinced that there is no valid ground or justification to interfere with the findings and conclusions recorded by the enquiring authority and the disciplinary authority or the quantum of punishment imposed on the petitioner.

The petitioner joined service as an Attender on 20th June, 1995 in the Court of Special Judicial Magistrate of II Class. While he was posted in the Court of Senior Civil Judge, Nellore, the latter was appointed as Administrator of A.S. Pet Darga at Nellore. In the course of performance of his duties as Administrator of Darga, the Senior Civil Judge associated the petitioner and assigned him the task of hundis. On 9-6-2001, the officer concerned discovered that the petitioner has made an attempt to embezzle a sum of Rs.9,450/-. He was caught red-handed. He was placed under suspension and a departmental enquiry was instituted against him under Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short

'the 1991 Rules'). Senior Civil Judge, Kavali, who was appointed as Enquiry Officer, gave full opportunity to the petitioner to defend himself against the allegations. After considering the evidence produced by the department and the defence of the petitioner, the Enquiry Officer submitted report dated 4th April, 2002 with the conclusion that the charge levelled against the petitioner has been proved. The disciplinary authority i.e., District and Sessions Judge, Nellore, tentatively accepted the findings of the Enquiry Officer and issued notice to the petitioner to enable him to make representation against the findings and conclusions recorded by the Enquiry Officer. A copy of the enquiry report was supplied to the petitioner along with the notice. He submitted reply to contest the findings recorded by the Enquiry Officer. Thereafter, the disciplinary authority passed order dated 28-5-2002 and imposed the penalty of removal from service on the petitioner. The appeal preferred by him was dismissed by Registrar (Administration), High Court of Andhra Pradesh.

In the backdrop of the above factual matrix, Sri Vedula Venkata Ramana, learned counsel appearing for the petitioner made two-fold submissions. He argued that the petitioner could not have been punished for an act of misconduct committed by him while he was not discharging the duties as an Attender. The second argument of the learned counsel is that the punishment imposed by the disciplinary authority is wholly disproportionate to the misconduct found proved and therefore the Court may substitute the same with lesser penalty.

Sri C.V. Nagarjuna Reddy, learned Advocate for the respondents supported the order passed by the disciplinary authority as also one passed by the appellate authority and argued that this Court should not, in exercise of its power under Article 226 of the Constitution of India, interfere with the well reasoned orders passed by the concerned authorities.

We have thoughtfully considered the rival arguments. In our opinion, the petitioner's challenge to the order of punishment as also the one passed by the appellate authority is meritless and the writ petition is liable to be dismissed. A reading of Rule 3 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short 'the 1964 Rules') shows that a government employee can be charged of misconduct in relation to the performance of duties, which may not be strictly akin to the duties assigned for that particular post. Rule 9 of the 1991 Rules provides for imposition of penalties enumerated therein for good and sufficient reasons. A careful

reading of the two rules makes it clear that a government servant can be proceeded against if he is found guilty not only of the specified acts which constitutes misconduct as defined in Rule 3 of the 1964 Rules, but also for any other conduct which may not show him in good stead. If the petitioner's case is examined in the light of the above, we do not find any difficulty in holding that he was rightly proceeded against in respect of the grave misconduct committed at the time of counting hundis. In our view, the petitioner, who was holding the post of Attender and was called upon by the Senior Civil Judge to assist him will be deemed to be discharging official duties and the misconduct committed by him squarely fell within the ambit of Rule 3 of the 1964 Rules.

Sri Venkata Ramana's passionate appeal to the Court to modify/substitute the penalty imposed by the disciplinary authority is not convincing. Even though the petitioner was holding the post which falls in the lowest strata of our administrative hierarchy, it cannot be ignored that he was found guilty of one of the gravest misconduct. Financial misfeasance by an employee howsoever high or low he may be, has to be considered with utmost seriousness irrespective of the quantum of money. The petitioner was found guilty of making an attempt to embezzle Rs.9,450/-. Therefore, the disciplinary authority did not commit any error by imposing the penalty of removal from service. In our opinion, even if the concerned authority had imposed the extreme penalty of dismissal, this Court would not have exercised jurisdiction under Article 226 of the Constitution of India to interfere with the discretion exercised by the employer.

No other point has been argued.

For the reasons mentioned above, the writ petition is dismissed.

G.S. SINGHVI, C.J.

24th February, 2006.

G.BHAVANI PRASAD, J.